

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re ERIC LEE HAWKINS and JENNIFER)	Case No. 06-60935-LYN
LYNNE SCOTT HAWKINS,)
)
Debtors.)
_____)

**MEMORANDUM
and
ORDER**

On June 23, 2006, the debtors filed a chapter 7 petition. In September, the debtors filed a motion to redeem a 2001 Mitsubishi Montero (“the Montero”) that secures a debt owed to Capital One Financing, which is serviced by CenterOne Financial Service (“CenterOne”). The debtors stated in their statement of financial affairs that they would reaffirm the debt to CenterOne pursuant to 11 U.S.C. §524(c). The debtors never filed an amended statement of financial affairs. On September 14, 2006, the debtors filed a motion to redeem the Montero.

There are two issues before the Court: (1) whether there is deadline for debtors in chapter 7 to file a motion to redeem property under Section 722; and (2) the appropriate method to be used to determine the value of collateral for purposes of redemption.

CenterOne argues that the debtors did not timely file the motion to redeem the Montero.

If a debtor wishes to either reaffirm a debt secured by collateral that is property of the estate or to redeem the collateral, the debtor shall, within thirty days of the date of the filing of a petition under chapter 7 of this title, file a statement of such intention. 11 U.S.C. § 521(a)(2)(A). A debtor shall perform any such intention within 30 days after the first date set for the meeting of creditors. 11 U.S.C. § 521(a)(2)(B).

If a debtor fails to either enter into a reaffirmation agreement or to redeem personal property that serves as security for the purchase price of that property, within 45 days of the date first set for the meeting of creditors, then the property shall no longer be property of the estate and the creditor may take any an all action “as is permitted by applicable nonbankruptcy law.” 11 U.S.C. § 521(a)(6).

CenterOne argues that the Debtors should “no longer retain possession of the vehicle because they did not reaffirm the underlying debt or redeem the vehicle within 45 days” after the first meeting of creditors. CenterOne presents neither law nor argument that would support such a holding. Section 521(a)(6) only provides that the stay shall be terminated if the debtor fails to timely reaffirm a debt or redeem the collateral the secures that debt. This is the only remedy provided to creditors by the Bankruptcy Code when a debtor fails to reaffirm a debt or redeem the collateral within 45 days of the date first set for the meeting of creditors. The debtors’ motion is timely filed.

CenterOne also argues that the debtors should be permitted to redeem the vehicle for \$11,225.00, the N.A.D.A. retail value. The Debtors have filed a “Vehicle Condition Report” (“the Report”) prepared by Collateral Valuation Services, LLC in Cincinnati, Ohio, that values the Montero at \$8,300.00. The Report values the Montero for the purpose of lending the debtors funds to redeem the vehicle.

The value of personal property “shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing.

With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.” 11 U.S.C. § 506(a)(1).

The valuation that the debtors argue is proper for redemption is not the amount of money that it would cost them to replace the Montero. It is the amount of money that a lender is willing to lend them if given a security interest in the Montero. The amount that a lender will be willing to lend a debtor based on a security interest in a vehicle will necessarily be different from, and less than, the amount of money that a seller would require of the debtor before the seller would be willing to sell the vehicle.

Additionally, Collateral Valuation Services has an incentive that differs from that of a seller, and, to some extent, parallels that of the debtor. That is, Collateral Valuation Services has an incentive to value the Montero at an amount that is below the retail value of the vehicle; that is below the amount that the debtor would have to pay to replace it. N.A.D.A., on the other hand has an incentive to value the vehicle at the amount that the debtor would have to pay to replace the vehicle. This is so because if its valuations are inaccurate, dealers will cease paying it for its services.

The valuation provided by the debtors from Collateral Valuation Services does not represent the “price a retail merchant would charge for” the Montero. Listings such as the N.A.D.A. retail value, adjusted for mileage and condition, do represent the amount that a merchant would charge for the Montero. The debtors may redeem the Montero at \$11,225.00.

ORDER ON MOTION TO REDEEM

The debtors may redeem the 2001 Montero from Capital One Financing, which is serviced by CenterOne Financial Service, for \$11,225.00

So ORDERED.

Upon entry of this memorandum and order the Clerk shall forward copies to Carl A Eason, Esq., Malissa L. Giles, Esq., and the chapter 7 trustee.

Entered on this 1st day of December, 2006.

A handwritten signature in black ink, appearing to read "William E. Anderson", is written over a horizontal line.

William E. Anderson
United States Bankruptcy Judge